IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1112 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : YES

TEXTILE TRADERS CO-OPERATIVE BANK LTD.

Versus

JAGDISHBHAI NATWARLAL PATEL

Appearance:

MR DIPAK R DAVE for Petitioner

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 9/5/2000

C.A.V. JUDGEMENT

1. Learned advocate Shri Dipak R. Dave is appearing on behalf of the petitioner. Learned advocate Mr. T.R. Mishra is appearing on behalf of the respondent workman. From the present petition, notice has been issued by this court on 28th February, 2000 and meanwhile ad-interim

relief had been granted by this court. So, the said petition is at notice stage and the advocates were heard at the admission stage.

2. In the present petition, the order passed by the Labour court, Ahmedabad in 'T' Application No.140 of 1993 dated 22nd June, 1998 has been challenged. In the said order, Labour Court, Ahmedabad has granted reinstatement of the respondent workman with continuity of service and with full backwages of interim period with a cost of Rs.1,000/-. The said order passed by the Labour Court, Ahmedabad is under the provisions of Bombay Industrial Relations Act and therefore, the petitioner has challenged the said order passed by the Labour Court in Appeal (I.T.) No.41 of 1998 before the Industrial Court, Ahmedabad and the Industrial Court, Ahmedabad has dismissed the appeal of the petitioner bank by order dated 17th January, 2000. So, in the present petition both the orders passed by the Labour Court as well as the Industrial Court in appeal are under challenge by the petitioner bank. The learned advocate, Mr. Dave who is appearing on behalf of the petitioner has submitted that the Labour Court and the Industrial Court has committed gross error in not believing the evidence of Jayantilal Keshavlal vide Exhibit 28, page 60 of the petition who is the witness of the petitioner bank. He further submitted that the Labour Court has considered the fact that after completion of the apprenticeship period, it is an obligation upon the employer to continue the employee in service. He further submitted that though the defence of Kaya Computers may not be taken as a plea in the written statement but the said questions were considered in the light of evidence of respective parties by asking some

questions in cross examination of Jayantilal Keshavlal. Therefore, there is no need of having a plea in the written statement in respect of Kaya Computers. He further submitted that the respondent was appointed under the provisions of Apprentice Act, 1961 and thereafter immediately after completion of the said training period, his services were terminated by the petitioner bank and therefore in the subsequent period there was no relationship of master and servant between the petitioner and the respondent and there was no previty of a contract between them. According to him, there was one year agreement of apprenticeship and the Industrial Court had

also committed a prima facie error in holding that the apprentice is a workman under the provisions of the Act. He also relied upon certain documents and oral evidences laid before the Labour Court. He read before this court Exhibit 10, page 20 which provides letter dated 23rd October, 1990, page 22 to page 27 appointment of apprentice and letter of the respondent workman at page 26. The evidence of Jagdishkumar Natwarlal Patel is at page 60. From the order of the Labour Court, paragraph 11 was read before this court. He also submitted that an apprentice is not a workman either under the provisions of BIR Act, 1946, Apprenticeship Act or under the provisions of ID Act, 1947. He also raised the contention that it amounts to a back door entry if reinstatement has been upheld and the respondent workman was having educational qualification up to SY.B.Com and before appointing him, rules and regulations have not

been followed and payments have been made on vouchers which were produced by the respondent workman before the Labour Court. Therefore, he relied upon certain decisions of the High Court and the Supreme Court. He relied upon one judgement of Kerala High Court reported in 1986 2 LLJ Page 492 and 1997 1 LLJ Page 88 paragraph 12. He also relied upon 1998 6 SCC Page 165 and 1998(8) SCC Page 767 wherein it is stated that an adhoc employee remained adhoc and a probationer remained probationer even if his probation period is not extended subsequently. He further submitted that there is no finding of 240 days completed by the respondent workman and therefore, Section 25F will not apply. He further relied upon 1997 1 GLH Page 750, 1998 8 SCC Page 733 paragraph 3 and 1986 LLN Page 869 - Kerala High Court and submitted that there was no victimisation and since it is a case of bonafide termination then in such circumstances, the petitioner cannot share the liability of full backwages being a co-operative bank and ultimately it amounts to the burden on the public exchequer. He further relied upon the decision of the Madras High Court 1985 2 LLJ Page 505 and 1980 (16) SLJ Page 422. He relied on the contention that this Court has discretionary powers to grant some compensation rather than confirming the order passed by the Labour Court and the Industrial Court. Against this, Mr. Mishra who is appearing on behalf of the respondent submitted that the back-door entry is not applied to the case of private industry as it applies to the public

Bodies wherein Article 12, 14, 16 has been applied and in the present case the petitioner being a private cooperative bank, Article 12, 14 and 16 are not applicable and therefore, the contention of back-door entry cannot be accepted. Mr. Mishra submitted that the Labour Court has examined the evidence on record, appreciated the same and then come to the conclusion that after completion of the apprenticeship period, the respondent workman was working with the petitioner bank for about 8 months continuously and thereafter his service was terminated by the petitioner bank on 31st December, 1992 and during that period the respondent workman has completed 240 days' continuous service and therefore, Section 25F is required to be followed which is not followed admittedly. Therefore, the entire order passed by the Labour Court is based on finding of fact and also on documentary and oral evidence and therefore while exercising the powers under Section 226 and 227, this Court cannot interfere in such finding which is not baseless and perverse. He further submitted that once the termination order is found to be bad for violating Section 25F of the ID Act, 1947 then the orders of termination become null and void ab initio and in the absence of gainful employment which is not proved by the petitioner bank, the respondent workman is entitled to a natural, normal and ordinary relief of reinstatement with full backwages which is granted by the Labour Court rightly. He also relied upon, in such circumstances, on the decision of the Division Bench of this Court 1985 2

GLR Page 104o, 1994 1 GLR Page 579 and a decision of the Apex Court reported in AIR 1979 SC Page 75. He also relied upon the decision of the Apex Court in the case of MCD vs. Pravin Kr. Jain reported in 1999 Lab.IC Page 619, AIR 2000 SC 454 and the decision of Jammu & Kashmir High Court reported in 1999 Lab. IC Page 1804 and on the decision of the Apex Court reported in 1999 Lab. IC Page 1125 wherein a question of retrenchment has been examined by the Apex Court. Therefore, according to Mr. Mishra, the Labour Court has not committed any error and similarly the Industrial Court has also considered in detail all submissions made by the petitioner bank after examining the validity of the order passed by the Labour Court. The Industrial Court has rightly rejected the appeal after appreciating the evidence on record and the Industrial Court has also considered the provisions of employment and the provisions of Apprentice Act. Therefore, according to Mr. Mishra, the present petition

is required to be dismissed. He further submitted that the petitioner bank has cleverly created a Maya of Kaya Computers just to misdirect the Labour Court and the respondent workman was, in fact, not appointed by Kaya Computers, as alleged by the petitioner but he was continuing in service even after completion of the apprenticeship period with the bank and thereafter on completion of 8 months' continuous service, his service was terminated on 31st December, 1992 which fact has been admitted by the witness of the petitioner bank.

3. After considering the submissions of both the learned advocates, I carefully examined the order passed by the Labour Court in 'T' Application No.140 of 1993. The facts remained that the respondent workman was appointed as an Apprentice Clerk with the petitioner bank from 10th February, 1991 and his period was of one year which completed on 31st January, 1992 and thereafter, the respondent workman was working with the petitioner bank and his service was terminated on 31st December, 1992. Therefore, the Labour court has considered the service which was rendered by the respondent workman subsequent to the period of apprenticeship training. Mr. Dave heavily relied upon the facts that the respondent workman was appointed under the provisions of Apprenticeship Act and therefore he is not a workman within the meaning of Section 2(s) of the ID Act as well as BIR Act. For that, there is no dispute because the law is laid down that an apprentice cannot be considered to be a workman during the training period under the provisions of Apprenticeship Act. In the present case, this is not the question which requires to be examined. The real question is that the apprenticeship training has come to an end on 31st January, 1992 and thereafter he was in service with the petitioner bank continuously up to 31st December, 1992 and during that period the respondent workman has completed 240 days continuous service and that period of service has been considered by the Labour Court as a workman and in not paying compensation and notice or noticee pay after completion of 240 days

continuous service the Labour Court has come to the conclusion that the order of termination is all illegal and ab initio void. These are the undisputed facts to the effect that the respondent workman was in service but

the defence was taken by the petitioner to the effect that he was not continuing with the bank but he was continuing with Kaya Computers. These disputed facts which were raised by the petitioner bank, in fact, has been decided by the Labour Court after appreciating the evidence on record and has come to the conclusion that he was not engaged by Kaya Computers but he was continuing earlier in service, after completion of the apprenticeship training, with the bank and therefore this is a pure finding of fact based on oral and documentary evidence after the same was reappreciated by the Labour Court. The Labour Court in terms come to the conclusion that before terminating the service of the respondent workman, no legal procedure has been followed by the petitioner bank and it is not the case of the petitioner bank that they followed legal procedure meaning thereby compliance of Section 25F of the ID Act. The finding in respect to the legal procedure which is not followed include not to follow Section 25F of the ID Act, 1947. Therefore, the decision which has been cited by the learned advocate Mr. Dave in respect to the fact that an apprentice is not a workman when there is no dispute to that aspect, there is no need to go into that decision. He cited one decision of Kerala High Court reported in 1986 Page 492 and submitted that a person ineligible to

be appointed for want of requisite qualification was appointed as a salesman on temporary basis subject to approval of Registrar of Co-operative Societies. It is considered that the appointment was made without authority of law and is abinitio void and therefore in such circumstances provision of Section 25F of the ID Act is not applicable. In the present case before this court, it is not the case of an ineligible person appointed by the petitioner bank or continuation of such a person in service by the petitioner bank. On the contrary, after completion of satisfactory training by the respondent workman as an apprentice if he continues in service then he cannot be termed as an ineligible person or appointment without authority of law. So, the facts of the present case are totally different to the cases cited by Mr. Dave.

4. He also relied upon one decision of Gujarat High Court 1992 Lab IC Page 2370 wherein also the contract is one of apprenticeship. No master and servant relationship emerged. For that there is no dispute that during the period of apprenticeship, an apprentice is not a workman and during that period there cannot be a

relationship of master and servant between the employer and apprentice but in the present case, the whole facts which have been examined by the Labour Court subsequent to the completion of apprenticeship training the respondent workman was remaining in service for more than 8 months with the petitioner bank and that fact has been

established on the basis of the evidence before the Labour Court and after appreciating the same, the Labour Court has come to the conclusion which is a finding of fact and therefore the said decision is also not applicable to the present case.

5. In the light of these submissions made by Mr. Dave, there are two decisions of the Rajasthan High Court and Patna High Court considering similar situations which has arisen in the present case by both the High Courts. The decision of the Rajasthan High Court in the case of Rajasthan Public Road Transport Corporation vs. Jagdish Vyas & Ors. reported in 1994 2 Lab.I.C. Page 1925 wherein it has been held that "the person appointed as an apprentice for one year was allowed to continue in employment for three years and 4 months without any specific order extending the apprenticeship or otherwise. Such employee has to be considered as workman against a vacant post. Service of such workman cannot be terminated without complying with the provisions of Section 25F of the ID Act, 1947. The said decision is given by the Division Bench of the Rajasthan High Court having a similar set of facts which have been under the present petition before this court and coming to such conclusion after considering the facts of that case, the Division Bench of the Rajasthan High Court held that "under these facts and circumstances of this case he who has completed training successfully and has been retained in service for three long years and 4 months for which no

formal order was issued either granting any appointment to the petitioner as a workman or extending his training period but instead of that he continued to work with them and he was retained in service for three long years and 4 months then there is no escape from the conclusion that he has to be treated as a workman against the vacant post. Of course, he could not have been treated to be a workman from 19th October, 1978 and could have been treated as a workman only on expiry of the training period from 18th October, 1979 because thereafter he was

allowed to continuing service for more than 3 years and 4 months. And therefore his service could not have been terminated without complying with the provisions of Section 25F of the Industrial Disputes Act.

6. There is another decision of the Division Bench of the Patna High Court in the case of Ram Dular Paswan vs. Labour Court, Bokaro Steel City and Ors. reported in 1999 Lab.IC Page 1026. The Division Bench of Patna High Court has considered the very similar facts of the present case and came to the conclusion that after completion of the apprenticeship period if the apprentice has been continued in service, then he is considered to be a workman and in such circumstances, Section 25F is required to be followed. If the apprenticeship contract is not registered then what is the effect to that is also considered by the Patna High Court in the present case. The Division Bench of Patna High Court has considered various provisions of the Apprenticeship Act Section 4

and Section 2(a), Section 18 and Section 3 and all other aspects has been considered. Paragraphs 5, 9 and 10 of the said decision are relevant which are reproduced as under to consider the very important issues raised in the cited case:-

> Every person or every apprentice working in an industry cannot be a workman. It is the type of work a person performs and the nature of duties, which he discharges, which is the determining factor in order to find out as to whether he is or is not a workman. The same test will apply to an apprentice also. If he is performing the type of work mentioned in S.2(s) of the I.D. Act, he is a workman to whom the said Act will apply.
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> The apprentices are mere trainees who are given training in specified trade. They are not employees of the person, who has engaged them. So long as they act as trainees they will be governed by the Apprentices Act and the I.D. Act cannot be applied to them. But if an apprentice does "any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward:, he will be a workman to whom I.D. Act will apply and, therefore, will not be governed by the Apprentices Act, even if he was enrolled as an apprentice trainee. It is not the label a person has, but the type of work which he

does, which is relevant criteria for determining as to whether he is or is not a workman.

The submission of the learned counsel for the respondents to the effect that the Apprentices Act being the special later law as regard apprentices, will prevail over the earlier ID Act, which is a general law, cannot be accepted for two reasons, namely, (i)such a question can arise only when there is a conflict between the two enactments. As mentioned hereinbefore there is no conflict between these two Acts. they have different objectives to achieve and operate in different areas; and (ii) ID Act is the special law as regards settlement of industrial disputes and it will prevail over other Acts in this regard. In this connection reference may be made to L.I.C. of India vs. D.J. Bahadur and others AIR 1980 SC 2181 : (1980 Lab IC 1218) (supra), wherein the Supreme Court has laid down as follows :--

"..... The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides denititionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also

provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission - the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workman, the ID Act is a special statute ....."

The Apprentices Act does not deal with the investigation and settlement of industrial disputes between the employer and the workmen. Therefore, so far as the settlement of the

industrial disputes is concerned, the ID Act will prevail over the Apprentices Act. If the employer takes the kind of work mentioned in S.2(s) of the ID Act from the apprentice, the dispute between them has to be settled under and in accordance with the said Act. But if the apprentice does not perform such work, the ID Act will not apply to him. The line of demarcation between the apprentice and the workman is very clear. If and when a question as to whether an apprentice is really an apprentice or is a workman wearing the mask of an apprentice, is raised, the appropriate authority/Labour Court will have to apply mind to the nature of his work. The veil has to be lifted in order to find out the reality. But such a question cannot be decided merely on the basis of apprenticeship contract or on the basis of the label, which a person wears.

7. In view of the above two decisions of the Division Bench of Rajasthan High Court and Patna High Court and considering the facts of the present case that the respondent workman has remained in service after completion of apprenticeship training with the petitioner bank and during that service, he completed 240 days continuous service and undisputedly at the time of termination Section 25F has not been followed by the petitioner bank and therefore, the termination order which has been challenged before the Labour Court is rightly set aside by the Labour Court while exercising the powers under Section 78/79 of the BIR Act, 1946 and when the petitioner bank has not proved gainful employment of the respondent workman, in such circumstances considering the two decisions of this court reported in 1985 2 GLR Page 1040 and 1994 1 GLR Page 579 and decision of the Apex Court reported in AIR 1979 SC Page 75, the respondent workman is entitled to full backwages of the interim period and similarly the Industrial Court has rightly rejected the appeal filed by the petitioner bank.

8. It is also necessary to consider one aspect that this is a petition under Article 226 and 227 filed by the

petitioner bank challenging the order passed by the Labour Court and Industrial Court in appeal. This court while exercising the powers under Article 226 and 227 of the Constitution of India has very limited jurisdiction to interfere with the order passed by the Labour Court and the Industrial Court. After carefully perusing the entire order passed by the Labour Court and the Industrial Court, I am of the opinion that none of the Courts had committed any error either in facts or in law and none of the courts has exceeded its jurisdiction. There is no infirmity, as pointed out by Mr. Dave, committed by both the Courts and the entire finding is based upon oral and documentary evidence resulting in a pure finding of fact which cannot be reappreciated by this Court while exercising the powers under Article 226 and 227 of the Constitution of India. This Court cannot act as an appellate authority or appellate court while exercising the powers under Article 226 and 227 of the Constitution of India. The view taken by the Apex Court in reported decisions 1998 1 GLR Page 17 and 1998 AIR SCW Page 1840 and the decision of the Division Bench of this Court reported in 1998 1 GLH Page 461 is that when there is a clear finding of fact and finding of the lower authority is not baseless and perverse and there is no miscarriage of justice, then this Court cannot interfere while exercising the powers under Article 226 and 227 of the Constitution of India. Therefore, according to my

opinion, this petition is required to be dismissed as having no merits and substance.

9. The Labour Court has passed an order dated 22nd June, 1998 in the present petition which is under challenge and the Industrial Court has passed an order on 17th January, 2000. However, the respondent workman has not been reinstated in service so far. Therefore, in the interest of justice I direct the petitioner bank to implement the order passed by the Labour Court in 'T' Application No.140 of 93 dated 22nd June, 1998 within a period of two months from the date of receiving a certified copy of the said order. Accordingly, the said petition is dismissed. Notice discharged. No order as to costs.

(H.K. Rathod, J.)

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